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TARIFF DIVISION

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August 22, 1979

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AUG 30 1979

POLE ATTACHMENT  
BRANCH

CABLE  
TV BUREAU

AUG 27 1979

Federal Communications Commission  
Cable Television Bureau  
1919 "M" Street N.W.  
Washington, D.C. 20554

ATTENTION: Mr. James R. Hobson, Chief

SUBJECT: Public Law 95-234

Dear Mr. Hobson:

FILED/ACCEPTED

APR 26 2010

Federal Communications Commission  
Office of the Secretary

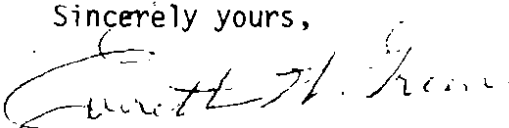
This is to certify that the Nebraska Public Service Commission has regulatory jurisdiction on the attachment of cable television systems' cables to the poles, ducts, conduits or rights-of-way of privately owned telephone companies in the State of Nebraska.

We further certify that in so regulating such rates, terms, and conditions, the Commission has the authority to consider and will consider the interests of subscribers of cable television services as well as the interests of the subscribers of the telephone companies involved.

We hope this certification notice meets with the requirements mandated under Public Law 95-234. If further clarification or requirements are necessary to comply with the statute, please do not hesitate to contact this Commission.

Attached is a copy of the official minute entry journalized by the Commission on August 21, 1979.

Sincerely yours,

  
Everett W. Green  
Secretary

EWG/lam

COMMISSIONERS:  
DUANE GAY  
JAMES F. MUNNELLY  
ERIC RASMUSSEN  
JACK ROMANS  
HAROLD SIMPSON

SECRETARY:  
EVERETT W. GREEN

In accordance with and pursuant to Docket 78-144 of the Federal Communications Commission, this Commission finds that it has jurisdiction and it is in the public interest to assert jurisdiction over C.A.T.V. pole attachments and the Commission orders all telephone companies within 60 days of the date of this order to file tariffs providing the rates, terms and conditions under which such companies shall hereafter allow the attachment of cable television facilities to telephone facilities. The Secretary of this Commission is directed to prepare and file forthwith a Certificate with the Federal Commission that this Commission has and asserts the jurisdiction provided in this regulation.

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

TV TRANSMISSION INC.; TELE-  
COMMUNICATIONS, INC.; CABLE  
SERVICES, INC.; CENTRAL CABLE  
SERVICES, INC.; SENEBC CABLE  
SERVICES, INC.; and U. A.  
COLUMBIA CABLEVISION, INC.,

Plaintiffs,

vs.

NEBRASKA PUBLIC SERVICE  
COMMISSION,

Defendant.

) Docket 352

Page 297

*In a telephone conversation of 9/10  
Melodie Mayfield of the Dist  
Court Clerks Office explained  
that this order was issued  
June 29, 1983. M. Wood*

ORDER

FILED/ACCEPTED

SEP 1 - 1983

APR 26 2010

Federal Communications Commission  
Office of the Secretary

This matter came on before the court on the 19th day of April, 1983, upon the plaintiffs' petition for a declaratory judgment. Trial was had, evidence received, the case briefed and submitted, and the court, being fully advised, finds that:

1. In this action the plaintiffs challenge the legality of the defendant's assertion of jurisdiction over pole attachment agreements between telephone utilities and community antenna television companies. The defendant Commission has asserted its jurisdiction first by a letter dated August 22, 1979, and then by adoption of Chapter V, Rule 32, of its rules and regulations.

2. Under the above regulatory scheme, in the event that there is a disagreement regarding a pole attachment agreement between a CATV company and a telephone utility, the Commission will act upon a petition by either of the parties to establish just and reasonable rates, terms, and conditions for pole attachment agreements. The

Dept. of Justice

JUN 30 1983

State of Nebraska

Commission's rules and regulations state that it has the authority to consider and does consider the interests of the CATV customers, as well as the interests of the telephone company customers.

3. The parties have stipulated that the CATV companies are not common carriers as defined in the Constitution of the State of Nebraska and by decisions of the Nebraska Supreme Court. Unless the state can certify to the Federal Communications Commission that it does in fact regulate pole attachment agreements and that it has both the authority to consider and does consider the interests of the subscribers of the CATV companies, the state will not have regulatory jurisdiction, and jurisdiction will remain with the FCC. Consistent with all the above, the defendant contends that it has properly asserted its jurisdiction.

4. The plaintiffs point out that Sections 18-2201 through 18-2205 relating to municipalities, and Sections 23-383 to 23-388 relating to counties, grant regulatory authority over CATV companies to those local governing bodies. Plaintiffs then argue that since the legislature has specifically provided for CATV regulation, and the jurisdiction of the defendant is limited by the Constitution to common carriers, which the plaintiffs are not, therefore the defendant has no constitutional or statutory authority to assert its jurisdiction over the plaintiffs. Plaintiffs further argue that the defendant's jurisdiction over telephone utilities is limited to their offering telephone services, and does not extend to the validity of contracts into which

they might enter, as long as the contracts do not impair the obligation of the utility to discharge its public duties.

5. Other jurisdictions that have faced the same question as presented in this litigation are divided. State authority over pole attachments has been denied in Florida and Indiana, and granted in Utah, New York, and Illinois.

6. This court is persuaded by the fact that the Nebraska legislature has seen fit to delegate regulatory authority of CATV companies to the cities and counties under the statutes previously cited. These statutory provisions have been held to be a legitimate exercise of legislative authority as a matter of statewide concern, in Hall v. Cox Cable of Omaha, Inc., 212 Neb. 887. If the legislature intended for the defendant Commission to regulate pole agreements, it could have easily done so. In view of the legislative grant of regulatory authority above mentioned, the limitation of the defendant Commission's regulatory authority to common carriers, and the fact that the plaintiffs are not common carriers, the defendant Commission exceeded its jurisdiction in issuing its letter dated August 22, 1979, and subsequently in promulgating Chapter V, Section 32, also known as Rule 53, of its rules and regulations.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the defendant Nebraska Public Service Commission does not have jurisdiction to regulate pole agreements between the Community Antenna Television Companies and telephone utilities in the State of Nebraska.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Section 32 of Chapter V of the Rules and Regulations of the Nebraska Public Service Commission, sometimes referred to as Rule 53, be and the same is hereby declared to be unconstitutional and an unlawful exercise of jurisdiction by the defendant Public Service Commission.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the costs of this action be taxed to the defendant.

DATED this \_\_\_\_ day of June, 1983.

BY THE COURT:

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Samuel Van Pelt  
District Judge

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the matter of the Commission,	)	Rule and Regulation No. 53
on its own motion proposes Rules	)	
Governing Cable Television Pole	)	ADOPTED
Attachments.	)	
	)	Entered: January 27, 1981

APPEARANCES: Bert Overcash, Attorney  
1500 Sharp Building  
Lincoln, Nebraska

Charles Humble, Attorney  
820 Stuart Building  
Lincoln, Nebraska

FILED/ACCEPTED

APR 26 2010

Federal Communications Commission  
Office of the Secretary

OPINION AND FINDINGS

BY THE COMMISSION:

Pursuant to notice published October 13, 1980 in the Daily Record, Omaha, Nebraska and mailed to all interested parties on October 9, 1980, public hearing was held on November 17, 1980 in the Commission Hearing Room, Lincoln, Nebraska.

The purpose of the hearing was to consider the adoption of Section 32 to Chapter V of the Commissions Rules and Regulations relating to Cable Television Pole Attachments.

The Rules and Regulations are proposed to carry out jurisdiction earlier asserted by letter filed with the Federal Communications Commission.

Eight persons presented testimony concerning the proposed Rules and Regulations during the public hearing.

Upon consideration of the proposed Rules and Regulations, the evidence adduced at the hearing and being fully advised the Commission is of the opinion and finds that the Rules and Regulations attached hereto and incorporated herein by reference should be adopted.

ORDER

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the Rules and Regulations attached hereto be and they are hereby adopted.

MADE AND ENTERED at Lincoln, Nebraska, this 27th day of January, 1981.

S

NEBRASKA PUBLIC SERVICE COMMISSION

E

Jack Romans /s/

A

Vice Chairman

L

ATTEST:

COMMISSIONERS CONCURRING:  
James F. Munnelly /s/  
Eric Rasmussen /s/  
Jack Romans /s/  
Harold D. Simpson /s/

Terrence L. Kubicek /s/  
Secretary

NEBRASKA PUBLIC SERVICE COMMISSION

RULES AND REGULATIONS

Chapter V

FILED/ACCEPTED

APR 26 2010

Federal Communications Commission  
Office of the Secretary

Section (32) Cable Television Pole Attachments.

- (a) Definitions - The following words when used in this Section, shall have the following meanings, unless clearly apparent from the context:
- i The word "Commission" shall mean the Nebraska Public Service Commission.
  - ii The term "telephone company" means any telephone company whose rates and charges are regulated by the Commission and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for wire communications.
  - iii The term "cable television company" shall mean any person or organization duly authorized to own, operate or control cable television facilities.
  - iv The term "pole attachment" means any attachment for cable television transmission or reception on a pole, duct, conduit or other right-of-way.
  - v A rate is "just and reasonable" if it bears a proportionate share of the operating expenses and taxes associated with the facilities being utilized, plus a reasonable return on that portion of the investment in plant and facilities used.
- (b) Where a cable television company and a telephone company are unable to agree upon rates, terms and conditions for pole attachments, the Commission shall have the authority, upon petition by either party, to establish just and reasonable rates, terms and conditions for pole attachments to serve the public interest.
- (c) In so regulating such rates, terms and conditions, the Commission has the authority to consider and does consider the interests of the subscribers of cable television services, as well as the interests of the consumers of the telephone company services.